

1 AN ACT
2 RELATING TO ELECTIONS; AMENDING, REPEALING AND ENACTING
3 SECTIONS OF THE MUNICIPAL ELECTION CODE TO PROVIDE FOR
4 ABSENTEE VOTING RATHER THAN EARLY VOTING FOR ANY REGULAR OR
5 SPECIAL MUNICIPAL ELECTION.

6
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

8 Section 1. Section 3-8-2 NMSA 1978 (being Laws 1985,
9 Chapter 208, Section 10, as amended) is amended to read:

10 "3-8-2. DEFINITIONS. --

11 A. The definitions in Section 3-1-2 NMSA 1978
12 shall apply to the Municipal Election Code in addition to
13 those definitions set forth in the Municipal Election Code.

14 B. As used in the Municipal Election Code:

15 (1) "absentee voter list" means the list
16 prepared by the municipal and county clerks of those persons
17 who have been issued an absentee ballot;

18 (2) "ballot" means a system for arranging
19 and designating for the voter the names of candidates and
20 questions to be voted on and for the marking, casting or
21 otherwise recording of such votes. "Ballot" includes
22 marksense ballots, absentee ballots, ballot faces, emergency
23 paper ballots and paper ballots used in lieu of voting
24 machines;

25 (3) "ballot face" means the material placed

1 on the front of the voting machine containing the names of
2 the candidates, the offices the candidates are seeking and a
3 statement of the proposed questions to be voted upon;

4 (4) "clerk" or "municipal clerk" means the
5 municipal clerk or any deputy or assistant municipal clerk;

6 (5) "county clerk" means the clerk of the
7 county or his designee within which the municipality is
8 located;

9 (6) "election returns" means all
10 certificates of the precinct board, including the
11 certificate showing the total number of votes cast for each
12 candidate, if any, and for or against each question, if any,
13 and shall include statements of canvass, signature rosters,
14 registered voter lists, machine printed returns, emergency
15 paper ballots, paper ballots used in lieu of voting
16 machines, absentee ballots, absentee ballot registers and
17 absentee voter lists or absent voter machine printed
18 returns;

19 (7) "emergency paper ballot" means the
20 paper ballot used when a voting machine becomes disabled so
21 that a voter is unable to cast a vote for all of the
22 candidates and questions of the voter's choice and have such
23 vote correctly recorded by the voting machine and when no
24 substitute voting machine is available;

25 (8) "marksense ballot" means a paper ballot

1 card used on an optical-scan vote-tabulating machine;

2 (9) "municipal clerk's office" means the
3 office of the municipal clerk or any other room used in the
4 process of absentee voting, counting and tallying of
5 absentee ballots or canvassing the election results within
6 the confines of the building where the municipal clerk's
7 office is located;

8 (10) "paper ballot" means a ballot manually
9 marked by the voter and counted by hand without the
10 assistance of a machine or optical-scan vote tabulating
11 device;

12 (11) "precinct" means a portion of a county
13 situated entirely in or partly in a municipality that has
14 been designated by the county as a precinct for election
15 purposes and that is entitled to a polling place and a
16 precinct board. If a precinct includes territory both
17 inside and outside the boundaries of a municipality,
18 "precinct", for municipal elections, shall mean only that
19 portion of the precinct lying within the boundaries of the
20 municipality;

21 (12) "consolidated precinct" means the
22 combination of two or more precincts pursuant to the
23 Municipal Election Code;

24 (13) "precinct board" means the appointed
25 election officials serving a single or consolidated

1 precinct;

2 (14) "recheck" pertains to voting machines
3 and means a verification procedure where the counter
4 compartment of the voting machine is opened and the results
5 of the balloting as shown on the counters of the machine are
6 compared with the results shown on the official returns; and

7 (15) "recount" pertains to emergency paper
8 ballots, paper ballots used in lieu of voting machines and
9 absentee ballots and means a retabulation and retallying of
10 individual ballots. "

11 Section 2. Section 3-8-14 NMSA 1978 (being Laws 1985,
12 Chapter 208, Section 22, as amended) is amended to read:

13 "3-8-14. VOTING MACHINES-- ORDERING-- PREPARATION--
14 CERTIFICATION-- DELIVERY. --

15 A. If voting machines are to be used, the
16 municipal clerk shall order the machines from the county
17 clerk within fifteen days of the adoption of the election
18 resolution, and the county clerk shall supply such voting
19 machines pursuant to Section 1-9-6 NMSA 1978. The county
20 shall provide voting machine technicians, voting machine
21 programming and voting machine transportation. The
22 municipality shall pay the reasonable fee charged by the
23 county for such services and the use of the voting machines,
24 but in no case in an amount which exceeds the actual cost to
25 the county pursuant to Section 1-9-12 NMSA 1978.

1 B. If voting machines are to be used, the
2 municipal clerk shall order at least one voting machine for
3 every polling place; provided that the clerk shall order a
4 sufficient number of voting machines to assure that the
5 eligible voters in that polling place shall be able to vote
6 in a timely manner.

7 C. Programming of electronic machines shall be
8 performed under the supervision of the municipal clerk and
9 the county clerk. The machines shall be programmed so that
10 votes will be counted in accordance with specification for
11 electronic voting machine adopted by the secretary of state.

12 D. Immediately upon receipt of the notice of
13 date, time and place of inspection and certification, the
14 municipal clerk shall post such notice in the office of the
15 municipal clerk and attempt to telephone the candidates at
16 the phone number listed on the declaration of candidacy to
17 give each candidate notice of the date, time and place of
18 inspection and certification.

19 E. Inspection and certification shall occur not
20 later than seven days prior to the election and shall be
21 open to the public. If electronic voting machines are to be
22 used for absentee voting, inspection and certification shall
23 occur not later than seven days prior to the beginning of
24 absentee voting and shall be open to the public.

25 F. At the date, time and place for inspection

1 and certification, in the presence of the county clerk and
2 those municipal candidates present, if any, the municipal
3 clerk shall:

4 (1) ensure that the correct ballot face has
5 been installed on each voting machine, if ballot faces are
6 to be installed;

7 (2) test each counter for accuracy by
8 casting votes upon it until it correctly registers each vote
9 cast;

10 (3) test each voting machine to assure that
11 it has been correctly programmed; and

12 (4) inform the county clerk when each
13 machine is satisfactory and ready to be certified.

14 G. If the municipal clerk informs the county
15 clerk that a machine is satisfactory and ready to be
16 certified:

17 (1) the county clerk shall reset each
18 counter at zero;

19 (2) the voting machine shall be immediately
20 sealed with a numbered metal seal so as to prevent operation
21 of the machine or its registering counters without breaking
22 the seal;

23 (3) the municipal clerk shall prepare a
24 certificate in triplicate for each machine that shall:

25 (a) show the serial number of the

1 voting machine;

2 (b) state that the voting machine has
3 all of its resettable registering counters set at zero;

4 (c) state that the voting machine has
5 been tested by voting on each registered counter to prove
6 the counter is in perfect condition;

7 (d) state that the correct ballot face
8 has been installed on the voting machine, if ballot faces
9 are to be installed;

10 (e) show the number of the metal seal
11 that has sealed the machine; and

12 (f) show the number registered on the
13 protective counter;

14 (4) a copy of the certificate shall be
15 delivered to the county clerk, the original certificate
16 shall be filed in the office of the municipal clerk and one
17 copy shall be posted on the voting machine; and

18 (5) if the voting machine requires keys,
19 the keys to the voting machine shall be enclosed in a sealed
20 envelope on which shall be written:

21 (a) the number of the precinct and
22 polling place to which the machine is assigned;

23 (b) the serial number of the voting
24 machine;

25 (c) the number of the metal seal that

1 has sealed the voting machine;

2 (d) the number registered on the
3 protective counter; and

4 (e) across the seal of the envelope,
5 the signatures of the county clerk, the municipal clerk and
6 all candidates present, if any, at the inspection and
7 certification.

8 H. After certification of the voting machines,
9 if the voting machines require keys, the county clerk shall
10 keep the keys to the voting machines in his custody and
11 shall deliver the keys to the municipal clerk when the
12 voting machines are delivered for election. The municipal
13 clerk shall secure in the office of the municipal clerk all
14 the envelopes containing the keys to the voting machines
15 until delivered to the presiding judge of the election.

16 I. An objection to the use of a particular
17 voting machine shall be filed in the district court within
18 two days after the machine has been certified. Any
19 objection so filed shall specify the number of the voting
20 machine objected to and the reason for the objection. Each
21 voting machine shall be conclusively presumed to be properly
22 prepared for the election if it has been certified unless a
23 timely objection has been filed.

24 J. Voting machines certified in accordance with
25 this section shall be delivered to the assigned precinct

1 polling place no earlier than five days prior to the
2 election and no later than noon on the day prior to the
3 election, provided that any voting machines to be used for
4 absentee voting shall be delivered to the municipal clerk no
5 earlier than five days prior to the beginning of absentee
6 voting and no later than noon on the day prior to the
7 beginning of absentee voting in person in the office of the
8 municipal clerk.

9 K. The municipal clerk shall refuse to certify
10 any voting machine that the municipal clerk determines is
11 not programmed properly, is not working properly or will not
12 fairly or accurately record votes. Only voting machines
13 that have been certified by the municipal clerk shall be
14 used in the election. "

15 Section 3. Section 3-8-17 NMSA 1978 (being Laws 1985,
16 Chapter 208, Section 25, as amended) is amended to read:

17 "3-8-17. SAMPLE BALLOTS. --

18 A. At the same time official ballots are printed
19 for voting with machines or paper ballots, the municipal
20 clerk shall cause sample ballots to be printed, which shall:

21 (1) be printed in both English and Spanish;
22 (2) be printed in a total number equal to
23 at least five percent of the number of qualified electors in
24 each precinct or consolidated precinct;

25 (3) be the same in all respects as the

1 official ballots, except that they shall be printed on
2 colored paper and shall not contain the facsimile signature
3 of the municipal clerk or any endorsement on the sample
4 ballot or the back thereof;

5 (4) be marked in large black capital
6 letters, "SAMPLE BALLOT"; and

7 (5) be made available in reasonable
8 quantities to all interested persons for distribution to the
9 voters.

10 B. Nothing in this section shall prevent any
11 person from having printed at his expense sample ballots, of
12 a different color than the official sample ballot, which
13 comply with the provisions of this subsection, so long as no
14 marks, notations, words or other material are added to,
15 taken from or deface, change or hide the information on or
16 the appearance of the sample ballot as authorized by the
17 municipal clerk."

18 Section 4. Section 3-8-18 NMSA 1978 (being Laws 1985,
19 Chapter 208, Section 26, as amended) is amended to read:

20 "3-8-18. ELECTION SUPPLIES. --

21 A. If paper ballots are to be used in lieu of
22 voting machines, then the municipal clerk shall order to be
23 printed paper ballots and sample paper ballots no later than
24 5:00 p.m. on the fifty-third day preceding the day of the
25 election. The ballots shall be delivered to the clerk not

1 later than the eighth day preceding the day of the election.

2 B. No later than 5:00 p.m. on the fifty-third
3 day preceding the day of the election, the municipal clerk
4 shall:

5 (1) order absentee ballots;

6 (2) order ballot faces, sample voting
7 machine ballots and emergency paper ballots, if voting
8 machines are to be used; and

9 (3) order all other election supplies
10 necessary for the conduct of the election.

11 C. Absentee ballots, emergency paper ballots,
12 ballot faces for the machines and sample voting machine
13 ballots shall be delivered to the municipal clerk not less
14 than thirty-five days prior to the day of the election."

15 Section 5. Section 3-8-26 NMSA 1978 (being Laws 1965,
16 Chapter 300, Section 14-8-4, as amended) is amended to read:

17 "3-8-26. REGULAR MUNICIPAL ELECTION-- PUBLICATION OF
18 RESOLUTION-- CHOICE OF BALLOTS OR VOTING MACHINES. --

19 A. Not earlier than one hundred twelve days or
20 later than eighty-four days prior to the date of a regular
21 municipal election, the governing body shall adopt an
22 election resolution calling for the regular municipal
23 election. The election resolution shall be published in
24 both English and Spanish and once within fifteen days of
25 adoption and again not less than sixty days prior to the

1 election or more than seventy-five days prior to the
2 election, as provided in Subsection J of Section 3-1-2 NMSA
3 1978. In addition, the election resolution shall be posted
4 in the office of the municipal clerk within twenty-four
5 hours from the date of adoption until the date of the
6 election. For information purposes and coordination, one
7 copy of the election resolution shall be mailed within
8 fifteen days of adoption to the secretary of state and the
9 county clerk of the county in which the municipality is
10 located.

11 B. The election resolution shall state the date
12 when the election will be held, the offices to be filled,
13 the questions to be submitted to the voters, the date and
14 time of the closing of the registration books by the county
15 clerk as required by law, the date and time for filing the
16 declaration of candidacy, the location of polling places,
17 the date and time for absentee voting and the consolidation
18 of precincts, if any, notwithstanding any conflicting
19 provisions of
20 Section 1-3-5 NMSA 1978. Any question to be submitted to
21 the voters in addition to the election of municipal officers
22 may be included in the election resolution, but such
23 inclusion shall not substitute for any additional or
24 separate resolution or publication thereof as required by
25 law.

1 C. In those municipalities allowed by law to use
2 paper ballots, the election resolution shall also state
3 whether paper ballots or voting machines will be used in the
4 election. "

5 Section 6. Section 3-8-40 NMSA 1978 (being Laws 1985,
6 Chapter 208, Section 48, as amended) is amended to read:

7 "3-8-40. CONDUCT OF ELECTION--PERSONS NOT PERMITTED TO
8 VOTE--CERTIFICATE VOTING--FRAUDULENT AND DOUBLE VOTING. --

9 A. No person shall vote in a municipal special
10 or regular election unless that person is a qualified
11 elector and he has appeared to vote at the polling place in
12 the precinct or consolidated precinct that encompasses his
13 place of residence as shown on the signature roster.

14 B. Notwithstanding the provisions of Subsection
15 A of this section, a person shall be permitted to vote even
16 though that person's name cannot be found in the signature
17 roster, provided:

18 (1) his residence is within the boundaries
19 of the municipality and within the boundaries of the
20 precinct and the district, if applicable, in which he offers
21 to vote;

22 (2) his name is not listed as having been
23 issued an absentee ballot;

24 (3) he presents a certificate bearing the
25 seal and signature of the county clerk stating that his

1 affidavit of registration is on file at the county clerk's
2 office, that he has not been purged from the voter rolls and
3 that he shall be permitted to vote in the precinct and
4 election specified therein; provided that such authorization
5 shall not be given orally by the county clerk; and

6 (4) he executes a statement swearing or
7 affirming to the best of his knowledge that he is a
8 qualified elector resident of the municipality, currently
9 registered and eligible to vote in that precinct and has not
10 cast a ballot or voted in the election.

11 C. Upon compliance with the requirements of
12 Subsection B of this section, the election judge shall cause
13 the election clerks to:

14 (1) write the person's name and address, as
15 shown on the certificate, in the signature roster under the
16 heading for name and address in the first blank space
17 immediately below the last name and address appearing in the
18 signature roster;

19 (2) insert the person's ballot number or
20 voter number as shown on the public counter of the voting
21 machine on the certificate and on his executed sworn
22 statement;

23 (3) retain the completed certificate and
24 the executed sworn statement, which shall be returned to the
25 municipal clerk with the election returns; and

1 (4) comply with all relevant requirements
2 of Section 3-8-41 NMSA 1978.

3 D. After canvass, the municipal clerk shall in
4 writing notify the county clerk of the names of all
5 individuals voting on certificates.

6 E. A person who knowingly executes a false
7 statement required by Paragraph (4) of Subsection B of this
8 section is guilty of perjury as provided in the Criminal
9 Code, and voting on the basis of such falsely executed
10 statement constitutes fraudulent voting.

11 F. A person not entitled to vote who
12 fraudulently votes or a person who votes or offers to vote
13 more than once at any election is guilty of a fourth degree
14 felony. "

15 Section 7. Section 3-8-43 NMSA 1978 (being Laws 1985,
16 Chapter 208, Section 51, as amended) is amended to read:

17 "3-8-43. CONDUCT OF ELECTION--CHALLENGES--REQUIRED
18 CHALLENGES--ENTRIES--DISPOSITION. --

19 A. A challenge may be interposed by a member of
20 the precinct board or by a challenger for the following
21 reasons, which shall be stated in an audible tone by the
22 person making the challenge:

23 (1) the person offering to vote is not
24 registered;

25 (2) the person offering to vote is listed

1 among those persons in the precinct to whom an absentee
2 ballot was issued;

3 (3) the person offering to vote is not a
4 qualified elector;

5 (4) the person offering to vote is not
6 listed on the signature roster or voter registration list;

7 (5) in the case of an absentee ballot, if
8 the official mailing envelope containing an absentee ballot
9 has been opened prior to delivery of absentee ballots to the
10 absent voter precinct board; or

11 (6) the person offering to vote is a
12 qualified elector of the municipality but does not reside in
13 the district where he is offering to vote.

14 B. When a person has offered to vote and a
15 challenge is interposed and the person's name appears in the
16 signature roster or his name has been entered in the
17 signature roster pursuant to Subsection C of Section 3-8-40
18 NMSA 1978, the election clerk shall write the word
19 "challenged" above the person's signature in the signature
20 roster.

21 (1) If the challenge is unanimously
22 affirmed by the election judges:

23 (a) the election clerk shall write the
24 word "affirmed" above the person's signature next to the
25 challenge notation in the signature roster;

1 (b) the person shall nevertheless be
2 furnished a paper ballot, whether or not voting machines are
3 being used at the polling place, and the election clerk
4 shall write the number of the ballot so furnished next to
5 the person's signature in the signature roster;

6 (c) the person shall be allowed to
7 mark and prepare the ballot. He shall return the paper
8 ballot to an election judge who shall announce the person's
9 name in an audible tone and in his presence place the
10 challenged ballot in an envelope marked "rejected", which
11 shall be sealed and the person's name shall be written on
12 the envelope; and

13 (d) the envelope containing the
14 rejected ballot shall then be deposited in the ballot box
15 and shall not be counted.

16 (2) If the challenge is not unanimously
17 affirmed by the election judges:

18 (a) the election clerks shall write
19 the words "not affirmed" above the person's signature next
20 to the challenge notation in the signature roster; and

21 (b) the person shall be allowed to
22 vote in the manner allowed by law as if the challenge had
23 not been interposed.

24 C. A required challenge shall be interposed by
25 the precinct board when a person attempts to offer himself

1 to vote and demands to vote and his name does not appear on
2 the signature roster and cannot be entered pursuant to
3 Subsection C of Section 3-8-40 NMSA 1978. A required
4 challenge shall be interposed by the precinct board as
5 follows:

6 (1) the election judge shall cause the
7 election clerks to enter the person's name and address under
8 the heading "name and address" in the signature roster in
9 the first blank space immediately below the last name and
10 address that appears in the signature roster;

11 (2) the election clerk shall immediately
12 write the words "required challenge" above the space
13 provided for the person's signature in the signature roster;

14 (3) the person shall sign his name in the
15 signature roster;

16 (4) the person shall nevertheless be
17 furnished a paper ballot, whether or not voting machines are
18 being used at the polling place, and the election clerk
19 shall write the number of the ballot so furnished next to
20 the person's signature in the signature roster; and

21 (5) the person shall be allowed to mark and
22 prepare the ballot. He shall return the paper ballot to an
23 election judge who shall announce his name in an audible
24 tone and in his presence place the required challenge ballot
25 in an envelope marked "rejected--required challenge" that

1 shall be sealed. The person's name shall be written on the
2 envelope and the envelope containing the rejected ballot
3 shall then be deposited in the ballot box and shall not be
4 counted. "

5 Section 8. Section 3-8-65 NMSA 1978 (being Laws 1985,
6 Chapter 208, Section 73, as amended) is amended to read:

7 "3-8-65. CONTEST OF ELECTIONS--PRESERVATION OF
8 BALLOTS--BALLOTS DEFINED--APPLICATION FOR ORDER--DEPOSIT.--

9 A. Either the contestant or contestee, within
10 the time provided by the Municipal Election Code for the
11 preservation of ballots, shall give notice by certified mail
12 to the municipal clerk that a contest is pending in a
13 designated court, and it is the duty of the municipal clerk
14 to preserve the ballots of all precincts named in the notice
15 of contest and to notify the county clerk to impound the
16 ballot faces and voting machines used in all of the
17 precincts named in the notice of contest until the contest
18 has been finally determined.

19 B. "Ballots", as used in Subsection A of this
20 section, includes signature rosters, registered voter lists,
21 machine-printed returns, voting machine permits, paper
22 ballots, marksense ballots, absentee ballots, absentee
23 ballot outer envelopes, statements of canvass, absentee
24 ballot applications, absentee ballot registers and absentee
25 voter lists.

1 C. Any contestant or contestee may petition the
2 district court for an order impounding ballots in one or
3 more precincts or consolidated precincts. The petition
4 shall state what specific items of ballots are requested to
5 be impounded. Upon receipt of the petition, along with a
6 cash deposit of twenty-five dollars (\$25.00) per precinct or
7 consolidated precinct, the court may issue an order of
8 impoundment. "

9 Section 9. Section 3-8-69 NMSA 1978 (being Laws 1985,
10 Chapter 208, Section 77, as amended) is amended to read:

11 "3-8-69. RECOUNT--RECHECK--PROCEEDINGS. --

12 A. Immediately after filing of the application
13 for recount or recheck, the municipal clerk shall issue a
14 summons directed to the precinct board of each precinct or
15 consolidated precinct specified in the application
16 commanding it to appear at the office of the municipal clerk
17 on a day fixed in the summons, which date shall not be more
18 than ten days after the filing of the application for
19 recount or recheck. A copy of the summons shall be
20 forwarded to the county clerk of the concerned county.

21 B. The municipal clerk shall deliver the summons
22 to a sheriff or state police officer who shall forthwith
23 personally serve it upon each of the precinct board members.
24 The municipal clerk shall send notices by registered mail of
25 the date, time and place fixed for recount or recheck to the

1 district judge and county clerk.

2 C. The precinct board, district judge or the
3 district court judge's designee, county clerk and the
4 municipal clerk shall meet on the date, time and places
5 fixed for the recount or recheck, and the ballot boxes or
6 voting machines of the precinct or consolidated precinct
7 involved in the recount or recheck shall be opened. The
8 precinct boards shall recount and retally the paper ballots
9 used in lieu of voting machines or emergency paper ballots
10 or recheck the votes cast on the voting machine, as the case
11 may be, and recount and retally the absentee ballots for the
12 office in question in the presence of the municipal clerk,
13 the county clerk, district judge or person designated to act
14 for the judge and any other person who may desire to be
15 present.

16 D. During the recount or recheck, the precinct
17 board of a precinct or consolidated precinct where emergency
18 paper ballots, paper ballots used in lieu of voting machines
19 or absentee ballots were used shall recount and retally only
20 the ballots that the election judge accepted and placed in
21 the ballot box at the time they were cast or received, as
22 the case may be.

23 E. After completion of the recount or recheck,
24 the precinct board shall replace the emergency paper
25 ballots, paper ballots used in lieu of voting machines or

1 absentee ballots in the ballot box and lock it, or the
2 voting machines shall be locked and resealed, and the
3 precinct board shall certify to the municipal clerk the
4 results of the recount or recheck. The district judge or
5 the person designated to act for the judge, the county clerk
6 and the municipal clerk shall also certify that the recount
7 or recheck was made in their presence. "

8 Section 10. Section 3-8-71 NMSA 1978 (being Laws 1985,
9 Chapter 208, Section 79, as amended) is amended to read:

10 "3-8-71. PRESERVATION OF ELECTION INFORMATION. --

11 A. The municipal clerk shall retain for two
12 years after each municipal election:

13 (1) the absentee ballot register,
14 application for absentee ballots, absentee voter lists and
15 affidavits of destruction;

16 (2) signature roster and registered voter
17 list;

18 (3) the machine-printed returns;

19 (4) oaths of office of the precinct board;

20 (5) declarations of candidacy and
21 withdrawals;

22 (6) copies of all election material
23 required to be published or posted;

24 (7) a copy of all sample ballots and ballot
25 faces;

- 1 (8) voting machine permits;
2 (9) certificates submitted by voters;
3 (10) copies of all affidavits and
4 certificates prepared in connection with the election;
5 (11) all results of recounts, rechecks,
6 contests and recanvass; and
7 (12) all other significant election
8 materials.

9 B. The district court shall retain for
10 forty-five days after each municipal election all election
11 materials sent by the precinct board. Thereafter, the
12 material may be destroyed unless needed by the court in
13 connection with a contest or other case or controversy.

14 C. The municipal clerk shall destroy election
15 records two years after the election by shredding, burning
16 or otherwise destroying."

17 Section 11. Section 3-8-74 NMSA 1978 (being Laws 1985,
18 Chapter 208, Section 82, as amended) is amended to read:

19 "3-8-74. UNLAWFUL POSSESSION OF KEYS--ABSENTEE BALLOT-
20 -PENALTY.--

21 A. Unlawful possession of keys consists of the
22 possession at any time by any person of any key to a voting
23 machine or ballot box or possession of an imitation or
24 duplicate thereof or making or causing to be made any
25 imitation or duplicate thereof unless authorized by the

1 Municipal Election Code.

2 B. A person who commits unlawful possession of
3 keys is guilty of a fourth degree felony.

4 C. Unlawful possession of an absentee ballot
5 consists of the possession by any person at any time of
6 absentee ballot materials when not authorized by the
7 Municipal Election Code to be in the possession of such
8 materials or when such materials were obtained in an
9 unlawful manner. As used in this section, "absentee ballot
10 materials" means an absentee ballot, absentee ballot
11 envelopes, the absentee ballot register or absentee ballot
12 return.

13 D. A person who commits unlawful possession of
14 an absentee ballot is guilty of a fourth degree felony. "

15 Section 12. Section 3-8-75 NMSA 1978 (being Laws 1985,
16 Chapter 208, Section 83, as amended) is amended to read:

17 "3-8-75. FALSE VOTING--FALSIFYING ELECTION DOCUMENTS--
18 FALSE SWEARING--PENALTY. --

19 A. False voting consists of:

20 (1) voting or offering to vote with the
21 knowledge of not being a qualified elector;

22 (2) voting or offering to vote in the name
23 of any other person;

24 (3) knowingly voting or offering to vote in
25 any precinct except that in which one is registered;

1 (4) voting or offering to vote more than
2 once in the same election;

3 (5) inducing, abetting or procuring or
4 attempting to induce, abet or procure a person known not to
5 be a qualified elector to vote; or

6 (6) inducing, abetting or procuring or
7 attempting to induce, abet or procure a person who has voted
8 once in any election to vote or attempt to vote again at the
9 same election.

10 B. A person who commits false voting is guilty
11 of a fourth degree felony.

12 C. Falsifying election documents consists of
13 performing any of the following acts willfully and with
14 knowledge and intent to deceive or mislead any voter,
15 precinct board, municipal clerk or other election official:

16 (1) printing, causing to be printed,
17 distributing or displaying false or misleading instructions
18 pertaining to voting or the conduct of the election;

19 (2) printing, causing to be printed,
20 distributing or displaying any official ballot, absentee
21 ballot, marksense ballot, sample ballot, facsimile diagram,
22 ballot face or pretended ballot that includes the name of
23 any person not entitled by law to be on the ballot or omits
24 or defaces the name of any person entitled by law to be on
25 the ballot or otherwise contains false or misleading

1 information or headings;

2 (3) defacing, altering, forging, making
3 false entries in or changing any election document,
4 including election returns, a certificate of election
5 registration record or signature rosters, affidavits,
6 certificates or any other election document except as
7 authorized in the Municipal Election Code;

8 (4) withholding any certificate of
9 election, registered voter list, signature roster, election
10 return or any other election document required by or
11 prepared and issued pursuant to the Municipal Election Code;
12 or

13 (5) preparing or submitting any false
14 certificate of election, signature roster, registered voter
15 list, election return or any other election document.

16 D. A person who falsifies election documents is
17 guilty of a fourth degree felony.

18 E. False swearing consists of knowingly taking
19 or giving any oath required by the Municipal Election Code
20 with the knowledge that the thing or matter sworn to is not
21 a true and correct statement.

22 F. A person who falsely swears is guilty of a
23 fourth degree felony. "

24 Section 13. Section 3-9-1 NMSA 1978 (being Laws 1973,
25 Chapter 375, Section 2, as amended) is amended to read:

1 "3-9-1. DEFINITIONS. --As used in Chapter 3, Article 9
2 NMSA 1978:

3 A. "absentee voting" means the casting of a vote
4 by a qualified elector for any candidate or question prior
5 to election day, by mail on an absentee ballot, in person on
6 an absentee ballot or in person on a voting machine;

7 B. "federal qualified elector" means a qualified
8 elector covered under the provisions of the Federal Voting
9 Assistance Act of 1955;

10 C. "federal voter" means a voter covered under
11 the provisions of the Federal Voting Assistance Act of 1955;

12 D. "covered under the provisions of the Federal
13 Voting Assistance Act of 1955" means:

14 (1) members of the armed forces while in
15 the active service and their spouses and dependents;

16 (2) members of the merchant marine of the
17 United States and their spouses and dependents; and

18 (3) citizens of the United States
19 temporarily residing outside the territorial limits of the
20 United States and the District of Columbia and their spouses
21 and dependents when residing with or accompanying them;

22 E. "armed forces" means the army, navy, air
23 force, marine corps, coast guard, environmental science
24 services administration and public health service;

25 F. "members of the merchant marine" means

1 persons other than members of the armed forces:

2 (1) employed as officers or members of
3 crews of vessels documented under the laws of the United
4 States or of vessels owned by the United States or of
5 vessels of foreign registry under charter to or control of
6 the United States; or

7 (2) enrolled with the United States for
8 employment or training for employment or maintained by the
9 United States for emergency relief service as officers or
10 members of crews of any such vessels, but does not include
11 great lakes or inland waterways service;

12 G. "voter" means a qualified elector of the
13 municipality; and

14 H. "election" means a regular or special
15 municipal election. "

16 Section 14. Section 3-9-4 NMSA 1978 (being Laws 1973,
17 Chapter 375, Section 3, as amended) is amended to read:

18 "3-9-4. ABSENTEE BALLOT APPLICATION--REJECTION--
19 ACCEPTANCE--ISSUANCE OF ABSENTEE BALLOT.--

20 A. Application by a federal qualified elector or
21 federal voter shall be made on the federal postcard
22 application form to the municipal clerk.

23 B. The municipal clerk shall prescribe the form
24 of the absentee ballot application.

25 C. An application for an absentee ballot may be

1 obtained by the voter from the municipal clerk. An
2 application for an absentee ballot may be requested by the
3 voter in person, by telephone or by mail, and any voter may
4 request an application for an absentee ballot for an
5 immediate family member. For purposes of this section,
6 "immediate family" means spouse, children, parents, brothers
7 and sisters.

8 D. A list containing the names and addresses of
9 voters requesting absentee ballot applications shall be kept
10 and shall be made a part of the absentee ballot register.

11 E. Upon receipt of a properly completed and
12 delivered application for an absentee ballot, the municipal
13 clerk shall contact the county clerk to determine if the
14 applicant is a qualified elector of the municipality.

15 F. The municipal clerk shall reject an absentee
16 ballot application for any of the following reasons:

17 (1) the application is not made on the form
18 provided by the municipal clerk;

19 (2) the application does not set forth the
20 applicant's full name and address;

21 (3) the application does not set forth the
22 applicant's social security number or date of birth;

23 (4) the application is not signed by the
24 applicant; or

25 (5) the applicant:

1 (a) has no valid affidavit of
2 registration on file with the county clerk and is not a
3 federal qualified elector or federal voter;

4 (b) has a valid affidavit of
5 registration on file with the county clerk, but is not a
6 resident of the municipality; or

7 (c) is a federal qualified elector or
8 federal voter, but is not entitled to vote in the municipal
9 election; and

10 (d) cannot comply with Subparagraph
11 (a), (b) or (c) of this paragraph pursuant to Subsection B
12 of Section 3-8-40 NMSA 1978.

13 G. If the municipal clerk rejects the absentee
14 ballot application pursuant to Subsection F of this section,
15 then the municipal clerk shall refuse to issue an absentee
16 ballot and shall mark the application "rejected" and enter
17 "rejected" in the absentee ballot register and file the
18 application in a separate file. The municipal clerk shall,
19 within twenty-four hours of rejection of the application,
20 notify the applicant of the reasons for rejection of the
21 application. Upon rejection of the application, the
22 municipal clerk shall determine the method of notification
23 to the voter. Notification shall only be made by courier
24 with return receipt or certified mail, return receipt
25 requested. The person whose application has been rejected

1 shall have ten days from receipt of notice to appeal or show
2 cause why the application should be accepted. In addition,
3 if the application is incomplete, the clerk shall mail
4 immediately a new application for absentee ballot.

5 H. If the application for absentee ballot is
6 accepted, the municipal clerk shall:

- 7 (1) mark the application "accepted";
- 8 (2) enter the required information in the
9 absentee ballot register; and
- 10 (3) issue to the applicant an absentee
11 ballot.

12 I. The municipal clerk shall deliver the
13 absentee ballot to the applicant in the office of the
14 municipal clerk if the application for absentee ballot has
15 been accepted and if the application is submitted in person
16 by the applicant or mail an absentee ballot to any qualified
17 elector, federal qualified elector or federal voter whose
18 application for an absentee ballot was received by mail and
19 has been accepted. The municipal clerk shall notify the
20 county clerk who shall write "absentee ballot" on the
21 signature line of the signature roster next to the name of
22 the person who has been sent an absentee ballot. Names of
23 individuals that have been labeled "absentee ballot" shall
24 appear on a separate list called the "absentee voter list".
25 This list shall be submitted to the municipal clerk by the

1 county clerk in the same manner as provided in Subsection B
2 of Section 3-8-7 NMSA 1978.

3 J. It is the duty of the municipal clerk to
4 verify the signature roster and absentee voter list to
5 ensure that all names of individuals who have been issued
6 absentee ballots have been labeled "absentee ballot" on the
7 signature roster and their names listed on the absentee
8 voter list. If not, the municipal clerk shall write
9 "absentee ballot" on the signature line of the signature
10 roster next to the name of the person who has been sent an
11 absentee ballot. The municipal clerk shall then enter the
12 name and all required information on the absentee voter
13 list.

14 K. If the application for an absentee ballot is
15 delivered in person to the municipal clerk during regular
16 hours and days of business and is accepted, the municipal
17 clerk shall issue the voter the absentee ballot and it shall
18 be marked by the applicant in a voting booth in the
19 municipal clerk's office, sealed in the proper envelopes and
20 otherwise properly executed and returned to the municipal
21 clerk or the clerk's authorized representative before the
22 applicant leaves the office of the municipal clerk, or allow
23 the voter to cast a vote on the voting machine. Absentee
24 ballots may be marked in person beginning at 8:00 a.m. on
25 the twenty-seventh day before the election at the municipal

1 clerk's office during the regular hours and days of business
2 until 5:00 p.m. on the Friday immediately prior to the date
3 of election. An absent voter may vote in person on a paper
4 ballot, or on an electronic voting machine, at the municipal
5 clerk's office beginning at 8:00 a.m. on the twentieth day
6 prior to the election until 5:00 p.m. on the Friday
7 immediately before the election.

8 L. The act of marking the absentee ballot in the
9 office of the municipal clerk shall be a convenience to the
10 voter in the delivery of the absentee ballot and does not
11 make the office of the municipal clerk a polling place
12 subject to the requirements of a polling place in the
13 Municipal Election Code other than is provided in this
14 subsection. During the period of time between the date a
15 person may first apply in person for an absentee ballot and
16 the final date for such application and marking of the
17 ballot in the office of the municipal clerk, it is unlawful
18 to solicit votes or display or otherwise make accessible any
19 posters, signs or other forms of campaign literature
20 whatsoever in the clerk's office.

21 M. Absentee ballots shall be air mailed to
22 federal qualified electors and federal voters whose
23 applications have been accepted not earlier than thirty-five
24 days prior to the election and not later than 5:00 p.m. on
25 the Friday immediately prior to the date of the election.

1 N. Absentee ballots shall be mailed to voters
2 whose applications have been approved not earlier than
3 thirty-five days prior to the election and not later than
4 5:00 p.m. on the Friday immediately prior to the date of the
5 election.

6 O. No absentee ballot shall be delivered or
7 mailed to any person other than the applicant for such
8 ballot."

9 Section 15. Section 3-9-7 NMSA 1978 (being Laws 1973,
10 Chapter 375, Section 8, as amended) is amended to read:

11 "3-9-7. MANNER OF VOTING--USE OF AN ELECTRONIC VOTING
12 DEVICE. --

13 A. Any person voting an absentee ballot under
14 the provisions of the Municipal Election Code shall secretly
15 mark the ballot in the manner provided in the Municipal
16 Election Code for marking emergency paper ballots, remove
17 any visible number on the ballot, place the ballot in the
18 official inner envelope and securely seal the envelope. The
19 person voting shall then place the official inner envelope
20 inside the official mailing envelope and securely seal the
21 envelope. The person voting shall then fill in the form on
22 the reverse of the official mailing envelope.

23 B. Federal voters and federal qualified electors
24 shall either deliver their ballots in person or mail the
25 official mailing envelope to the municipal clerk of their

1 municipality of residence or deliver it to a person
2 designated by federal authority to receive executed ballots
3 for transmission to the municipal clerk of the municipality
4 of residence. Voters shall either deliver or mail the
5 official mailing envelope to the municipal clerk of their
6 municipality of residence. The municipal clerk shall not
7 accept an official outer envelope that is delivered in
8 person to the municipal clerk's office from any person other
9 than the voter signing the official outer envelope.

10 C. Any person voting on the marksense ballot
11 shall secretly mark the ballot by completing the arrow in
12 pencil directly to the right of the candidate's name or the
13 proposed question. The voter shall then place the marked
14 ballot in the official inner envelope and securely seal the
15 envelope and then place the official inner envelope inside
16 the official mailing envelope and securely seal the
17 envelope. The voter shall then complete the form on the
18 reverse of the official mailing envelope.

19 D. When an electronic voting device is used by
20 the voter to cast an absentee vote, the municipal clerk
21 shall ensure that each absentee voting machine is located
22 within the office of the municipal clerk. The area shall be
23 secured by lock and key. Each day during the time the
24 absentee voting machine is used for absentee voting, the
25 municipal clerk shall, in the presence of one other employee

1 of the municipality, unlock the office where the voting
2 machine is located. Each day, at the close of regular
3 office hours, the municipal clerk shall, in the presence of
4 one other municipal employee, secure the office where the
5 voting machine is located. Each day immediately after
6 unlocking or locking the office where the voting machine is
7 located, the municipal clerk and the employee present shall
8 sign or initial the absentee voting daily report. The
9 municipal clerk shall prescribe the form of the absentee
10 voting daily report, which shall include the following
11 information:

- 12 (1) the voting machine serial number;
- 13 (2) beginning and ending public counter
14 number for the day;
- 15 (3) beginning and ending protective counter
16 number for the day;
- 17 (4) closing seal number, if any;
- 18 (5) the total number of voters for the day;

19 and

20 (6) a place for the date and signature of
21 the municipal clerk and the municipal employee.

22 E. Voting shall be conducted substantially in
23 the manner provided in the Municipal Election Code. The
24 absentee voting daily report shall be submitted to the
25 absent voter precinct on election day, along with any voting

1 machines used. "

2 Section 16. Section 3-9-8 NMSA 1978 (being Laws 1973,
3 Chapter 375, Section 9, as amended) is amended to read:

4 "3-9-8. CARE OF ABSENTEE BALLOTS--DESTRUCTION OF
5 UNUSED BALLOTS BY MUNICIPAL CLERK. --

6 A. The municipal clerk shall mark on each
7 completed official outer envelope the date and time of
8 receipt in his office, record this information in the
9 absentee ballot register and safely and securely keep the
10 official outer envelope unopened until it is delivered on
11 election day to the proper precinct board or until it is
12 canceled and destroyed in accordance with law. Once a
13 ballot is officially accepted by the municipal clerk and
14 recorded in the absentee ballot register, it cannot be
15 returned to the voter for any reason.

16 B. The municipal clerk shall accept completed
17 official outer envelopes received by mail or delivered in
18 person to the municipal clerk's office by the voter signing
19 the official outer envelope or by members of the voter's
20 immediate family until 7:00 p.m. on election day. For
21 purposes of this section, "immediate family" means spouse,
22 children, parents, brothers and sisters. Any completed
23 outer envelope received after that time and date shall be
24 marked as to the time and date received, shall not be
25 delivered to the precinct board and shall be preserved until

1 the time for election contests has expired. In the absence
2 of a court order, after the expiration of the time for
3 election contests, the municipal clerk shall destroy all
4 late official mailing envelopes without opening or
5 permitting the contents to be examined, cast, counted or
6 canvassed. Before their destruction, the municipal clerk
7 shall count the numbers of late ballots from voters, federal
8 voters and federal qualified electors and record the number
9 from each category in the absentee ballot register.

10 C. After 5:00 p.m. and not later than 8:00 p.m.
11 on the Thursday immediately preceding the date of the
12 election, the municipal clerk shall record the numbers of
13 the unused absentee ballots and shall publicly destroy in
14 the municipal clerk's office all such unused ballots. The
15 municipal clerk shall execute a certificate of such
16 destruction, which shall include the numbers on the ballots
17 destroyed, and such certificate shall be placed within the
18 absentee ballot register.

19 D. At 7:00 p.m. on the day of the election, the
20 municipal clerk shall determine the number of ballots that
21 were mailed and have not been received and execute a
22 "certificate of unreceived absentee ballots". Such
23 certificate shall be placed in the absentee ballot register
24 and shall become an official part of the register. The
25 municipal clerk shall determine the form of the certificate

1 of unreceived absentee ballots."

2 Section 17. Section 3-9-10 NMSA 1978 (being Laws 1985,
3 Chapter 208, Section 98, as amended) is amended to read:

4 "3-9-10. DELIVERY OF ABSENTEE BALLOTS TO ABSENT VOTER
5 PRECINCT. --After 7:00 a.m. on election day, the municipal
6 clerk shall deliver to the absent voter precinct board the
7 absentee ballot register and the absent voter ballots
8 received by the clerk, any electronic voting machines used
9 and all absentee voting daily reports. Prior to 7:00 p.m.
10 on election day, the municipal clerk shall deliver any
11 ballots received on election day to the absent voter
12 precinct board and the precinct board shall note the receipt
13 of ballots in the absentee ballot register and on the
14 absentee voter list. On delivery of the ballots, the
15 municipal clerk or his designee shall remain in the presence
16 of the absent voter precinct board until the clerk has
17 observed the opening of all official mailing envelopes, the
18 deposit of all ballots in the locked ballot box and the
19 listing of the names on all of the official mailing
20 envelopes in the absentee voter list. All functions of the
21 absent voter precinct board shall be conducted in the place
22 designated as the absent voter precinct."

23 Section 18. Section 3-9-13 NMSA 1978 (being Laws 1973,
24 Chapter 375, Section 11, as amended) is amended to read:

25 "3-9-13. VOTING IN PERSON PROHIBITED. --

1 A. No person who has been issued an absentee
2 ballot shall vote in person at that person's regular
3 precinct polling place on election day except as otherwise
4 provided in the Municipal Election Code.

5 B. At any time prior to 5:00 p.m. on the Friday
6 immediately preceding the date of the election, any person
7 whose absentee ballot application has been accepted and who
8 was mailed an absentee ballot but who has not received the
9 absentee ballot may execute, in the office of the municipal
10 clerk of the municipality where that person is registered to
11 vote, a sworn affidavit stating that the person did not
12 receive or vote his absentee ballot. Upon receipt of the
13 sworn affidavit, the municipal clerk shall issue the voter a
14 replacement absentee ballot.

15 C. The municipal clerk shall prescribe the form
16 of the affidavit and the manner in which the municipal clerk
17 shall void the first ballot mailed to the applicant."

18 Section 19. A new section of the Municipal Election
19 Code is enacted to read:

20 "ABSENTEE BALLOT--CONDUCT OF ELECTION--WHEN NOT TIMELY
21 RECEIVED--EMERGENCY PROCEDURE FOR VOTING AND COUNTING.--

22 A. A voter who has submitted an application for
23 an absentee ballot that was accepted by the municipal clerk
24 but who has not received the absentee ballot by mail as of
25 the date of the election may present himself at his assigned

1 polling place and, after executing an affidavit of non-
2 receipt of absentee ballot, shall be issued an emergency
3 paper ballot in lieu of an absentee ballot by the presiding
4 judge, and shall be allowed to mark the ballot.

5 B. The voter shall place the completed emergency
6 paper ballot issued in lieu of an absentee ballot in an
7 official inner envelope, substantially in the form
8 prescribed pursuant to Section 3-9-6 NMSA 1978, which shall
9 be sealed by the voter. The official inner envelope shall
10 then be placed by the voter, in the presence of the
11 presiding judge, in an official outer envelope substantially
12 as prescribed for a transmittal envelope or mailing envelope
13 pursuant to Section 3-9-6 NMSA 1978. The presiding judge
14 shall fill in the information on the back of the envelope
15 that identifies the voter by name and signature roster
16 number and contains the printed affidavit that the voter
17 made application for an absentee ballot, which the voter
18 believes to have been accepted by the municipal clerk, that
19 the voter swears an absentee ballot had not been received as
20 of the date of the election and that the voter was issued an
21 emergency paper ballot in lieu of an absentee ballot, and
22 that the ballot was marked by the voter and submitted to the
23 presiding judge.

24 C. The presiding judge shall place all emergency
25 paper ballots issued in lieu of absentee ballots in a

1 special envelope provided for that purpose by the municipal
2 clerk, seal the envelope and return it to the municipal
3 clerk along with the machine tally sheets after the closing
4 of the polls. The sealed envelope shall not be placed in
5 the locked ballot box.

6 D. The municipal clerk shall, upon receipt of
7 the envelope containing emergency paper ballots in lieu of
8 absentee ballots, and no later than forty-eight hours after
9 the close of the polls for the election, remove the
10 transmittal envelopes and without removing or opening the
11 inner envelopes, determine:

12 (1) if the voter did in fact make
13 application for an absentee ballot that was accepted by the
14 municipal clerk;

15 (2) if an absentee ballot was mailed by the
16 municipal clerk to the voter; and

17 (3) whether an absentee ballot was received
18 by the municipal clerk from the voter by 7:00 p.m. on
19 election day.

20 E. If the municipal clerk determines that the
21 emergency paper ballot in lieu of absentee ballot is valid,
22 that an absentee ballot was mailed to the voter and that no
23 absentee ballot was received from the voter by the municipal
24 clerk, the municipal clerk shall remove the inner envelope
25 without opening it, retain the transmittal envelope with the

1 other election returns and place the inner envelope,
2 unopened, in a secure and locked container to be transmitted
3 to the canvassing board to be tallied and included in the
4 canvass of the election returns for the municipality.

5 F. If the municipal clerk determines that the
6 emergency paper ballot in lieu of absentee ballot is not
7 valid because the application for absentee ballot was
8 rejected and no ballot was mailed to the voter, or that a
9 ballot was received from the voter by the municipal clerk
10 not later than 7:00 p.m. on election day, the municipal
11 clerk shall write "rejected invalid ballot" on the front of
12 the transmittal envelope and the transmittal envelope shall
13 not be sent to the canvassing board for counting and
14 tallying. The municipal clerk shall retain the unopened
15 transmittal envelope in a safe and secure manner and shall
16 notify the district attorney in writing of the alleged
17 violation of the Municipal Election Code. A copy of the
18 notification to the district attorney shall be sent by first
19 class mail to the voter and to the secretary of state.

20 G. The municipal clerk shall furnish and shall
21 prescribe the form of the necessary envelopes to be used in
22 accordance with the purposes of this section, and shall take
23 steps to preserve the secrecy of any ballots cast pursuant
24 to this section. "

25 Section 20. REPEAL. -- Sections 3-8-81 through 3-8-83,

1 3-8-83.1 and 3-8-84 through 3-8-95 NMSA 1978 (being Laws
2 1999, Chapter 278, Sections 37 through 39, Laws 2001,
3 Chapter 197, Section 11 and Laws 1999, Chapter 278,
4 Sections 40 through 44 and 46 through 52, as amended) are
5 repealed. _____

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